

Application Serial No: 10/750,189

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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First Named Inventor	:	Bran FERREN, et al.
Serial No.	:	10/750,189
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**REMARKS/ARGUMENTS FOR PRE-APPEAL BRIEF REVIEW**

Claims 1 - 8 stand rejected under 35 USC 103 in view of Kempen/Jacob. [Office Action: page 2]. Claims 15 - 18 stand rejected under 35 USC 103 in view of Kempen/Glatzmeier. [Office Action: page 2.] The prima facie case of obviousness with regard to all Claims 1-18 is incomplete at least in that, 1) there exists no valid motivation to combine Kempen with either Jacob or Glatzmeier to arrive at the claimed invention, and, 2) there is not a reasonable expectation of success in arriving at the claimed invention through the combinations.

First, concerning Claims 1-8, the Examiner has argued that the motivation to combine Kempen with Jacob to use the smaller and plural modules of Jacob is because such modification **"would allow municipalities to make better use of their investment in the multi-task truck,"** i.e., by re-using one chassis to do several different tasks to reduce capital costs. [Office Action: page 3]. This motivation is extracted verbatim from the disclosure of Jacob, and, directed to the "substitute body"

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described in Jacob, which is the equivalent of the variant module of Kempen. Given that both Jacob and Kempen independently satisfy this need, there would be no motivation to combine the two references and the Examiner has failed to make a prima facie case of obviousness as to Claims 1-8.

Second, concerning Claims 15-18, the Examiner has likewise argued that **"it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the smaller and plural modules of Glatzmeier et al because such modification would provide rapid and free assembly of variously fitted equipment cabs due to rapidly-changing conditions of use."** [Glatzmeier, column 1, lines 20-28.] However, Applicant respectfully points out that this is clear error in the basis for this rejection in that the referenced phrase was directed to another prior art configuration. [Glatzmeier: column 1, lines 11-29]. Glatzmeier teaches away from the claimed invention and discloses a "self-supporting box structure for a utility vehicle" which **"permits a large number of embodiment variants for the equipment cab, which are then not further altered in operation"** (emphasis added). [Glatzmeier, Col. 1, lines 31-35]. Consequently, the motivation to combine Kempen with Glatzmeier is lacking and the Examiner has failed to make a prima facie case of obviousness as to Claims 15-18.

Further, Applicant contends that a person of ordinary skill in the art would not be motivated to combine Kempen with the rudimentary teachings of Jacob to arrive at the claimed invention. The Examiner asserts that Kempen teaches the elements of claim 1 of Applicant's invention, particularly by equating a "variant module" of Kempen to the individualized, combinable, modules of the claimed invention [Kempen: Col. 3, lines 1-11].

Additionally, the Examiner argues that **"Applicant mistakenly argues that the Examiner has mischaracterized the modules disclosed by Kempen,"** in that **"Kempen is not cited for teaching the at least two modules with unique functions. Applicant is arguing the reference separately and not for what the combination discloses."** [Advisory Action: Section 11.] However, this argument presumes that the references would be combined. Applicant is entitled to argue Kempen separately as a

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basis for rebutting the contention that there would exist motivation to combine Kempen with Jacob, therefore, rejection on this basis is clearly in error.

In further support of Applicant's contention that there exists no motivation to modify or combine the cited references, and, even if combined, there could be no reasonable expectation of success, Applicant discusses aspects of the cited references and the claimed invention below.

Kempen, in the spirit of being his own lexicographer, uses the term "module" to loosely refer both to interchangeable "interface modules" of a control system and "variant modules" representing entirely different types of vehicles, including a fire engine, a tow truck/wrecker, a dump truck, a water pump truck and a telephone truck [col. 39, lines 29-32], creating a slippery slope of interpretation re: the term, "module". Kempen discloses a singular, unitary body attached to a vehicle chassis, with power and communication hookups: "a chassis and a variant module" [emphasis added; col. 3, lines 2-3; col. 26, lines 20-54]. In contrast, the Applicant's invention proposes a "mix and match" approach with multiple distinct but integral specialized modules, each with independent functionality which, when combined, would comprise the body of a functional vehicle.

Kempen discloses standard cab and body attachment points and does not support the attachment of multiple modules as in the claimed invention. The claimed invention includes an arrangement of fixation points to accommodate a plurality of modules. Kempen discloses only one set of mechanical attachments, one fluid connector, and one electrical connector [Kempen: col. 28, line 67, "two mating connectors 1681 and 1682"]. Applicant's invention supports multiple functional modules of various sizes and in various combinations wherein a plurality of connection sites must be furnished on the standard platform, including multiple mechanical attachments and multiple sets of fluid and electrical connectors. The Applicant has described and claimed these aspects. Jacob fails to disclose any connectors on the chassis for electrical and fluid supply to removable modules.

Examiner agrees that Kempen does NOT disclose "fixation sites defining fractional locations." [Office Action, page 2.] Jacob also fails to disclose such an

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arrangement. Neither his segmented portions of the truck bed having no mechanical connection to any of the containers nor the generalized use of shear plates for attachment are equivalent to Applicant's fixation sites.

Examiner argues that making Kempen's single module into similar multiple modules requires only routine skill in the art [Office Action: page 6]. Applicant contends that fundamental and nonobvious modifications and invention are necessary for a multiple module scheme, as claimed by the Applicant, which is beyond routine skill in the art, and, certainly not described in either Kempen or Jacob.

Jacob discloses a multi-task truck, where multiple containers are placed in segments of the truck bed, individual components are directly attached to the truck bed chassis using shear plates, or components are rolled onto the truck chassis using a single slide plate. Irrespective of the means of attachment, neither the containers nor the components include electrical or fluid connections for integration with the chassis. Jacob does NOT teach "fixation sites defining fractional locations along an overall platform extent" as in the claimed invention.

In light of the above arguments, Applicant contends there would have no motivation to combine the specialized unitary body of Kempen, which completely and totally changes the character of the vehicle, with any of Jacob's removable containers, components on a skid plate, or, attachment of individual components to a chassis using shear plates. Consequently, the Office Action fails to make a prima facie case of obviousness with regard to Claims 1-8 for the previously stated reasons.

The Examiner states that **"the arguments with respect to Glatzmeier et al are also not convincing because they mischaracterize what is taught."** [Advisory Action: Sec. 11.] The Examiner contends that **"the box structure of Glatzmeier is actually equivalent to applicant's fixation sites. The modules are the generator unit (49) or other pieces of equipment mentioned on lines 62-67, on column 8."** [Advisory Action: Sec. 11.] Applicant has reviewed the cited portion of Glatzmeier and continues to contend that there is no equivalency between these elements, and hence, rejection on this basis is clearly in error.

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Glatzmeier discloses a "self-supporting box structure for a utility vehicle" which "permits a large number of embodiment variants for the equipment cab, **which are then not further altered in operation**" [col. 1, lines 31-35]. In essence, Glatzmeier simply describes a type of structural design to produce a nonremovable, unitary body. Consequently, the "apparent reason" cited by the Examiner for combining Kempen and Glatzmeier "to use the smaller and plural modules of Glatzmeier et al because such modification would **provide rapid and free assembly of variously fitted equipment cabs** ... due to rapidly changing conditions of use" cannot be accommodated by the permanently installed box structure disclosed by Glatzmeier. [Office Action: page 5]. Consequently, rejection on this basis is clearly in error.

As pointed out in earlier office action responses, Glatzmeier does not disclose "smaller and plural modules" [col. 1, lines 20-28]. These lines refer to other art (Hawelka & Staudinger, DEC3517290, US4830421) which has been mischaracterized by Glatzmeier. The modules cited in Hawelka are independent, cylindrical equipment racks fitted into the body of the vehicle, which can be changed out for other racks, and which do not themselves comprise the body of the vehicle. There are no electrical or fluid interconnections to these racks. The Examiner has argued that items 176 and 177 of Glatzmeier are equivalent to a "plurality of fixation sites" as in the claimed invention [Office Action: page 7]. Close examination of Glatzmeier reveals that items 176 and 177 are merely standard cab and body attachment points. These standard attachment points do NOT equate to the plurality of fixation points of the claimed invention. Hence, there is no motivation to combine, and, the combination of Kempen/Glatzmeier would not yield the claimed invention, and therefore, a *prima facie* case of obviousness has not been made.

In addition to the reasons stated above, the *prima facie* obviousness case is further defective because the office action did not address the required **reasonable expectation of success** in modifying/combining references per MPEP 2142, 2143, and 2143.02. For the foregoing reasons, the *prima facie* obviousness case is incomplete and Applicant respectfully requests allowance of the present claims.